

1 The California Department of Real Estate

GOVERNMENT REGULATION OF BROKERAGE TRANSACTIONS

As our country's development passed through the pioneering and homesteading stages to urbanization, people across the land found it increasingly difficult to "strike a deal" with strangers for land and homes. There was a real need for an intermediary to provide basic real estate knowledge and services and negotiate transactions. The real estate agent met this need and continues to fill this important role today.

Along with increasing opportunities to provide real estate services to the maturing nation came abuses of the public trust in the form of unethical, illegal or sharp practices by dishonest or incompetent agents operating in a climate of unorganized and often unscrupulous competition. Real estate practitioners themselves began to see the need for government regulation. The public's legitimate interest in the buying, selling, exchanging and financing of real property has led to regulation of the real estate business through the adoption of legislative and administrative controls.

California's Legislature passed the nation's first real estate licensing law in 1917. The courts declared that law to be unconstitutional, based on its conditions compared to the licensing requirements of the Insurance Commissioner. California then adopted the Real Estate Act of 1919, which the State Supreme Court upheld as a reasonable exercise of the power of the state to regulate the conduct of its citizens in the interest of the common good.

All fifty states and the District of Columbia have enacted statutes governing, to some degree, the licensing, regulation and conduct of real estate agents. This type of government regulation and supervision has its foundation in what is known as the police power.

The Police Power and the Real Estate Law

For many people, the phrase "police power" evokes images of police officers, jails and courtrooms. But the police power involves much more than the business of detecting crime and criminals and maintaining public order and tranquility. The following, excerpted from a United States Supreme Court case, gives a useful description of the police power:

"By means of it, the legislature exercises a supervision over matters affecting the commonweal and enforces the observance by each individual member of society of duties which he owes to others and the community at large. The possession and enjoyment of all rights are subject to this power. Under it the state may prescribe regulations promoting the health, peace, morals, education and good order of the people, and legislate so as to increase the industries of the state, develop its resources and add to its welfare and prosperity."

In short, police power is the power of the state to enact laws within constitutional limits to promote the order, safety, health, morals and general welfare of our society.

The police power does not vest arbitrary authority in any legislative body. Laws emanating from exercise of the police power must be necessary and proper for the protection or advancement of a genuine public interest. Neither state nor local authority

may impose onerous, unreasonable or unnecessary burdens upon persons, property or business.

Legislation intended to protect the public safety, health and morals may impact the manner of conducting lawful occupations and businesses *without*, of course, taking away the right to be gainfully employed.

For many years, society has benefited from regulation of professions such as law, medicine and dentistry. More recently, many other professions, including real estate, have become subject to regulation beyond that of mere licensing.

The organized real estate industry has been among the strongest supporters of the real estate licensing law. The industry is aware that reasonable regulation of those engaged in the real estate business benefits the public by creating and maintaining professional standards and ethical practices in the conduct of real estate brokerage activities. This, in turn, benefits the industry by creating an orderly market place.

The Real Estate Law exists primarily for the protection of the public in real estate transactions involving the services of an agent. By requiring qualifications for licensing, the law enables the Commissioner to ascertain that persons acting in the capacity of a broker or salesperson meet certain standards of knowledge and honesty and, for the broker license, experience.

The Commissioner's authority is not arbitrary. For the Commissioner to find that an applicant for a license is not honest and truthful there must be facts which justify that conclusion. When an applicant has the qualifications required by law, the Commissioner must issue the license.

Subdivisions

With statutory authority, the Commissioner began regulating the sale or lease of subdivided lands in 1933. Like the 1919 licensing law, the subdivided lands provisions survived the State Supreme Court's test of constitutionality. The court held that the object of the law was the prevention of fraud and sharp practices in a type of real estate transaction particularly open to abuses. The court said the method of furnishing information to real property purchasers, which involved investigation and written disclosure of certain essential facts, was appropriate protection. We call this disclosure document a public report.

Law Codified

On August 4, 1943, the Legislature organized the statutory authority of the Department of Real Estate (DRE) into the two Parts of Division 4 of the Business and Professions Code (hereinafter, the Code). Part 1 (now Sections 10000 to 10580) is titled Licensing of Persons and may be cited as the Real Estate Law. Part 2 (now Sections 11000 to 11200) is titled Regulation of Transactions and may be cited as the Subdivided Lands Law. (Note that these laws are quite different in purpose and operation from real property law, law of agency, contract law, or other legal aspects of real estate ownership and conveyancing.)

Administration by Commissioner

The Commissioner's mission is to enforce the Real Estate Law and the Subdivided Lands Law in a manner which achieves maximum protection for persons dealing with real estate licensees and for purchasers of subdivided real property. Foremost among the Commissioner's specific duties are: the qualification of applicants and issuance of real

estate licenses; the investigation of complaints and, where appropriate, pursuit of formal action against licensees; the investigation of nonlicensees alleged to be performing acts for which a license is required; and the regulation of the sale or lease of subdivision interests. The Commissioner also, through real estate broker and other license requirements, regulates dealings in mineral, oil and gas property and Prepaid Rental Listing Services.

The Real Estate Advisory Commission

The Commissioner appoints the ten members of the Real Estate Advisory Commission. Six are California real estate brokers and four are public members.

The Commission consults with the Commissioner and makes recommendations regarding the functions and policies of the Department and how the Department may best serve the people of the State and recognize the legitimate needs of the industry. After notice of time and place, the Commissioner presides at quarterly meetings of the Commission. At Commission meetings, licensees and members of the public may express their views and make suggestions.

When a Real Estate License Is Required

Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, 10131.45, and 10131.6 of the Business and Professions Code (hereinafter, the Code) define the scope of a real estate broker's activity. Mortgage loan broker activities may be found in Sections 10131 (d) and 10240, et seq. of Article 7 (known as the Real Property Loan Law). Trust deed transactions and real property sales contract transactions requiring a license are defined in Sections 10131 (e) and Sections 10230-10236.2 (Article 5). Advance fee brokerage activities are defined in Section 10131.2. Mobilehome sales activities requiring broker licensure are described in Section 10131.6 and Prepaid Rental Listing Services provisions are found in Sections 10167-10167.17. Mineral, oil and gas property dealings requiring a broker license can be found in Sections 10131.4 and 10131.45. Section 10132 of the Code defines a real estate salesperson and the acts requiring licensure and employment by a real estate broker.

Without a license, an individual cannot receive compensation for the performance of any of the acts defined as being within the purview of a licensed broker or salesperson. In addition, the law provides penalties for a person who acts or purports to act as a real estate broker or salesperson without being duly licensed. The Commissioner may levy a fine against any real estate broker who is found in a disciplinary hearing to have compensated an unlicensed person for performing activities which require a real estate license. Furthermore, any person who compensates a nonlicensee for performing services which require a license is guilty of a misdemeanor and may also be fined by the courts. (Sections 10138, 10139, 10139.5 of the Code)

Exemptions From License Requirements

Exemptions to the license requirement include: resident managers of apartment buildings and complexes or their employees; short-term (vacation) rental agents; employees of certain lending institutions; employees of real estate brokers for specific, limited functions; lenders making loans guaranteed or insured by an agency of the federal government; certain agricultural associations; licensed personal property brokers; cemetery authorities; certain collectors of payments for lenders or on notes for owners in connection with loans secured directly or collaterally by liens on real property, provided such collectors annually meet exemption criteria; clerical help, etc.

(See Sections 10131.01, 10133, 10133.1, 10133.15 10133.2, 10133.3, 10133.35, 10133.4, and 10133.5 of the Code for the license exemptions.)

Examinations Required

The law requires the Commissioner to ascertain by written examination that the license applicant is qualified to act in the capacity of a broker or salesperson. Under no circumstances can the examination requirement be waived. An applicant for a real estate license examination must meet the prerequisite requirements and be scheduled for the applicable qualifying examination. The examination application and fee are valid for a maximum period of two years after the application was filed. No restrictions are placed on the number of times an applicant who fails the qualifying examination may apply for reexamination. Applicants may apply for reexamination by filing the Examination Result Notification (RE 418), or an Examination Change Application (RE 415), and the appropriate examination fee. If the applicant is unsuccessful in passing the examination within the two-year period, the application expires and the applicant will be required to submit a new application and fee, and may be required to submit new qualification documents.

When a qualifying examination is passed, the successful examinee is entitled to apply for a four-year license. The examinations are discussed in more detail in Chapter 2.

Applications

Applications for all examinations and for all licenses issued by the Commissioner must be made on forms furnished by DRE. Forms can be obtained at any of DRE's offices or by writing to the main office in Sacramento. Detailed instructions are furnished with the application forms. An application for an examination or a license may be presented at any of DRE's offices or (preferably) mailed to Sacramento. A license application must be accompanied by the current license fee, one fully completed and classifiable fingerprint card, and the fingerprint processing fee.

Fingerprint Requirement

An applicant for any real estate license must submit one set of classifiable fingerprints, acceptable to the State Department of Justice (DOJ), unless the applicant is currently licensed by DRE or has held a real estate license which expired less than two years ago.

Fingerprints must be submitted through DOJ's Live Scan Program, which involves the electronic taking and transmission of fingerprints to DOJ. A Live Scan Service Request form (RE237) will be sent to all applicants who successfully complete the real estate examination. Live Scan applicants should take the Live Scan Service Request form to a participating Live Scan service provider. After the Live Scan service provider takes the fingerprints, the applicant must submit to DRE a copy of the RE 237 with Part 4 completed, along with the applicant's completed original license application and the appropriate fee. A list of Live Scan service providers will be provided at the time the license examination is taken, or can be obtained by calling DRE at (916) 227-0931, or by checking the Department of Justice Web site at <http://caag.state.ca.us/fingerprints> and looking under Contact Information.

Applicants who reside outside California may continue to submit fingerprints in ink using the California license applicant Fingerprint Card (BID 7).

An additional charge of \$32.00, payable to DRE, is required for processing fingerprints through DOJ. This fee must be included with the license application and license fee.

Within 90 days after issuance, the Commissioner may suspend without a hearing the license of anyone who procured a license by fraud, misrepresentation or deceit, or made any material misstatement of fact in the application. (Section 10177.1 of the Code)

Proof of Legal Presence

All applicants for a real estate salesperson, broker, officer, mineral, oil and gas broker, or prepaid rental listing service license, must submit proof that they have legal presence in the United States before an original or renewal license can be issued. A proof of legal presence document (i.e., birth certificate, resident alien card, etc.) must be submitted by original and renewal license applicants only one time with a Public Benefits Form (RE205). Please refer to that form for further instructions and information.

License Term

Original broker and salesperson licenses are issued for a four-year period. A broker or salesperson license may be renewed every four years by filing the proper application, fee, and evidence of completion of continuing education. A license may not be renewed which has been revoked as a disciplinary measure or denied or suspended under the provisions of Section 11350.6 of the Welfare and Institutions Code (Family Law - Child Support). The license issued to a salesperson who has not completed the educational requirements outlined under Section 10153.4 within eighteen months of license issuance will be suspended automatically and may not be renewed unless the educational requirements are completed within the original four-year license term.

ORIGINAL REAL ESTATE BROKER LICENSE

The individual broker license entitles a natural person to conduct a brokerage business under his/her own name or, if so licensed, under a fictitious business name.

The applicant for an original real estate broker license must: (1) be at least 18 years old; (2) have had previous experience and education as required by law; (3) be honest and truthful; and (4) pass the qualifying examination. The Real Estate Law requires that every applicant for a real estate broker license must either have been actively engaged as a real estate salesperson for at least two years during the five years immediately preceding the application or prove to the satisfaction of the Commissioner that applicant has general real estate experience which would be the equivalent of two years of full-time experience as a salesperson completed within a similar time period, and must have successfully completed the following statutory three semester-unit (or quarter equivalent) college-level courses:

1. Real Estate Practice
2. Legal Aspects of Real Estate
3. Real Estate Finance
4. Real Estate Appraisal
5. Accounting *or* Real Estate Economics
6. And *three* from the following:
 - Real Estate Principles
 - Business Law
 - Property Management
 - Real Estate Office Administration
 - Escrows
 - Advanced Legal Aspects of Real Estate
 - Advanced Real Estate Finance
 - Advanced Real Estate Appraisal
 - Mortgage Loan Brokering and Lending

NOTE: If the applicant completes both Accounting and Economics, only two courses from Group 6 are required.

As an alternative to the experience requirements, the applicant may submit evidence of graduation from a four-year university or college accredited by the Western Association of Schools and Colleges or similar regional accrediting agency recognized by the United States Department of Education, and completion of the required real estate courses.

Some private vocational schools offer these required courses, both in residence (classroom) and through correspondence study. However, only those private schools formally approved by DRE may offer these courses for DRE credit.

Experience Qualification

Many candidates for a real estate broker license base their claims of qualification on two years of experience as a licensed real estate salesperson in California. However, even though DRE's records show the applicant has been licensed for two or more years as a salesperson, that fact does not in itself qualify the applicant. Evidence that an applicant has worked full time as a salesperson for at least two years must be provided by the applicant's employing broker(s), using an Employment Verification (RE 226). The completed verification forms must be mailed with the application. If applicant is unable to obtain certification of experience from the employing broker, experience may be corroborated, on an Employment Certification (RE 228), by at least two other individuals who were employed in a related real estate field and were in a position to verify the applicant's duties and employment dates, etc. An explanation should be included as to why the employing broker of record cannot verify the salesperson's experience.

The Employment Verification and Employment Certification forms should include sufficient detail to enable DRE to perform an evaluation. DRE may conduct further inquiry in order to evaluate claimed experience.

Alternate Qualification Methods

A claim of equivalent experience, in lieu of the two years of salesperson experience required for the broker examination, may be based on any combination of salesperson experience, equivalent real estate related experience and education, which, considered as a whole, would satisfy the intent of the law.

Claims of equivalent real estate related experience may be made by submitting a completed Equivalent Experience Verification (RE 227). This form must be certified by employers or other responsible parties who have been in a position to verify the applicant's employment status. The verification must include a clear, detailed description of the applicant's duties/activities, as they relate to the general field of real estate. Further information concerning the types of equivalent experience which are considered acceptable for qualification purposes is contained in the most recent edition of the *Instructions to License Applicants* pamphlet that may be obtained at any DRE office or on-line at www.dre.ca.gov.

If an applicant has been licensed as a real estate salesperson in another state, RE 226 must be used to verify previous salesperson experience. If an applicant has been licensed as a real estate broker in another state, two responsible parties, such as other real estate brokers, title officers or loan officers, who have been in a position to verify the applicant's employment status, must complete RE 228. The verification must include a

clear, detailed description of the applicant's duties/activities and indicate how the verifier is aware of the applicant's employment record.

Claims of qualification based on a college degree with specialization in subjects relating strictly to real estate must be supported by official transcripts of educational records.

In some instances, applicants may be in a position to claim qualification by combining certain experience and education. For example, the applicant may have been actively engaged as a licensed salesperson in California for one year, had additional experience as an escrow officer or a loan officer, and also had certain education relating to real estate. In such cases, a combination claim for experience can be made.

All claims of experience qualification for real estate broker license, including those based upon two years of full-time work as a licensed salesperson in California, are individually evaluated. The Commissioner decides whether the claim of qualification meets the Commissioner's standards. If the claim is approved, the candidate is scheduled for examination. If rejected, the candidate may eventually qualify for a real estate broker license examination by working the required time as a salesperson. Often a claim of qualification is rejected but the applicant is given a certain amount of credit toward two years as a salesperson. Care in preparing the claim of qualification and the required verification forms will facilitate the experience review process. DRE may conduct further inquiry when evaluating experience.

The applicant who fails to qualify for a license because of lack of experience and/or educational prerequisites is not entitled to a refund of the fee paid with the application. The fee, however, remains to the applicant's credit for two years.

Examination for Original Broker License

All applicants for an original broker license must take and pass a written qualifying examination before the license can be granted.

The appropriate fee must be submitted with a Broker Examination Application (RE 400B). An applicant failing the examination may apply for reexamination and must pay the appropriate fee. There is no limit to the number of reexaminations which may be taken but an application is valid for only two years. A person who fails to pass the examination during this two-year period must file a new application. The application must include documentation which supports the qualification of the applicant.

If an applicant does not take the examination on the date scheduled, or wishes to change the scheduled date, a new examination may be scheduled by completing, signing, and returning the Broker Examination Schedule Notice (RE 401B) to DRE. The rescheduling request may also be made on an Broker Examination Change Application (RE 415B). The first request for a new examination date must be submitted with the appropriate rescheduling fee.

An applicant who passes the examination is notified and may apply for the original broker license.

CORPORATE REAL ESTATE LICENSE

In some cases, brokers will elect to do business as a corporation. A corporation may be licensed as a real estate broker, provided at least one officer of the corporation is a duly qualified real estate broker willing to act as the corporation's responsible designated broker-officer. The corporation must submit, along with the appropriate Corporation

License Application and fee, a Certificate of Status issued by the Secretary of State within 30 days prior to the date the application is filed and a statement of officers as filed with the Secretary of State.

Broker-Officers

Each broker who is to act for and on behalf of a corporation as a broker-officer must submit a completed Corporation License Application and the appropriate license fee. Broker-officer applicants who currently hold an officer license for a corporation but have never obtained an individual broker license will be required to furnish evidence of completion of the current continuing education requirements which have been attained within the previous four years.

Corporation Background Statement

The designated officer of an original corporation license applicant must submit a completed Corporation Background Statement (RE 212) for himself or herself and for each director, the chief executive officer, the president, first level vice presidents, secretary, chief financial officer, subordinate officers with responsibility for forming policy of the corporation and for each natural person owning or controlling more than 10% of the corporation's shares, if that person has been subject to one of the conditions listed in subdivision (a) of Regulation 2746. (See Regulation 2746.) Also, an RE 212 is required whenever there is a change in corporation officers. A copy of the Corporate Statement of Officers as filed with the Secretary of State, or as amended by corporate resolution to reflect the present corporation officers must be submitted with the RE 212.

Certificate of Qualification - Foreign Corporation

In the case of a foreign corporation, a Certificate of Qualification is required, executed within thirty days prior to the date the corporation submits its application.

Fictitious Business Name (dba)

To use any name other than its own, the corporation must submit a copy of a Fictitious Business Name Statement as filed with the county clerk's office in the county where the corporation's principal place of business is located. (Section 10159.5 of the Code)

Salesperson Licensed to Corporation

The corporation must submit a completed Salesperson Change Application (RE 214) for each currently licensed salesperson to be placed in the employ of the corporation.

Replacing the Designated Broker-Officer

The designated broker-officer of a corporation may be replaced by another qualified broker for the balance of the license period by submitting: (a) a completed Corporation License Application (RE 201) and Corporation Background Statement (RE 212); and (b) a copy of the personally signed resignation of the officer leaving the firm, or a copy of the Resolution of the Board of Directors with the corporate seal, or a signed statement giving the date of death of the currently licensed designated broker-officer. To keep the corporation continuously licensed, the RE 201, RE 212, and the resignation documentation must be received in the same package.

Adding A New Officer as the Designated Officer

A new designated officer may be licensed upon receipt of a completed Corporation License Application, Corporation Background Statement, the appropriate license fee and statement that the currently designated broker-officer will remain with the firm as an "additional" officer. Broker-officer applicants without individual broker status will be

required to furnish evidence of completion of appropriate continuing education requirements, attained within the previous four-year period. DRE will issue branch licenses to match the term of the new “designated” officer without any additional fee.

Change Of Designated Officer When Both Currently Hold A Broker-Officer License With Corporation

To effect this change, the corporation must submit a completed Corporation Change Application and Corporation Background Statement. No new license certificate will be issued to either officer. However, if the license terms differ, new branch office licenses will be issued.

Change of Main Office or Mailing Address

Submit a completed Corporation Change Application signed by a licensed officer.

Change of Corporation Name

Submit a completed Corporation Change Application signed by a licensed officer and a copy of the Amended Articles of Incorporation reflecting the name change and bearing the endorsed or filed stamp of the California Secretary of State. If the corporation is currently licensed with a fictitious business name, a copy of the refiled Fictitious Business Name Statement showing the new corporation name as registrant must be submitted.

ORIGINAL SALESPERSON LICENSE

This license is required for an individual who is to be employed as a salesperson under the control and supervision of a licensed broker. The license permits licensed activity only while in the employ of a broker. Salesperson licenses must be available for inspection in the broker’s main office (Commissioner’s Regulation 2753). The salesperson can be compensated for work as an agent only by the salesperson’s employing broker. (Sections 10132 and 10137 of the Code)

License Requirements

A candidate for an original real estate salesperson license must: (1) be at least 18 years old; (2) make application on a form prescribed by the Commissioner; (3) be honest and truthful; and (4) pass a qualifying examination as required. The applicant must, prior to the examination, complete a statutory three semester-unit or four quarter-unit college-level course in real estate principles, and, either prior to issuance of the original license or within 18 months after issuance, complete two additional basic real estate courses selected from the following:

- real estate practice
- real estate appraisal
- accounting
- business law
- property management
- mortgage loan brokering/lending
- legal aspects of real estate
- real estate finance
- real estate economics
- escrows
- real estate office administration

All courses must be three semester-unit or four quarter-unit courses from an institution of higher learning accredited by the Western Association of Schools and Colleges or similar regional accrediting agency recognized by the United States Department of Education, or an equivalent course of study offered by a private vocational school approved by DRE.

The application for a salesperson examination must be made on RE 400A and be accompanied by the appropriate examination fee.

There is no limitation on the number of reexaminations which may be taken by the candidate who fails the qualifying examination. Each examination application must include the reexamination fee.

An applicant who fails to take the examination on the scheduled date may apply for another examination date by completing, signing and submitting the Salesperson Examination Schedule Notice (RE 401A), along with the appropriate fee. The rescheduling request can also be made on a Salesperson Examination Change Application (RE 415A).

An applicant who successfully passes the salesperson examination may apply for a four-year original license by submitting, within one year of the examination date, an application for the real estate salesperson license (RE 202) together with the appropriate license fee, one fully completed classifiable fingerprint card, the fingerprint processing fee, and transcripts showing completion of the remaining required courses. If the applicant does not submit evidence of completion of the two remaining required courses when applying for the license, the applicant must pay a higher license fee and will be issued an 18-month conditional license. If evidence of completion of the remaining two college-level courses is not submitted within 18 months of the date the license is issued, the license will be automatically suspended. The suspension can be lifted by submitting the required course information up to four years from the date the license was issued. If the course information is not submitted by that date, the license may not be renewed and the applicant would have to requalify through the examination process in order to obtain a new license.

LICENSE RENEWALS - BROKERS AND SALESPERSONS

All real estate licenses are issued for a period of four years. A license is renewable without examination upon submittal of the appropriate fee and evidence of completion of the required continuing education. The application for license renewal must be postmarked prior to midnight of the expiration date of the current license to avoid a lapse in licensure and payment of a late renewal fee. For the purpose of determining the date of mailing, postage meter stamps are not considered evidence of a postmark by the U.S. Postal Service.

If a broker's license expires, all licensed activities of the broker must cease and the broker's salespersons are immediately placed in a non-working status. Any branch office licenses are cancelled. The broker must then re-activate the license of each salesperson to the broker's employ by submitting a Salesperson Change Application (RE 214). The broker must re-activate any branch office licenses by submitting a Branch Office Application (RE 203).

An individual with a conditional salesperson license which has been suspended may renew the license only by submitting evidence of completion of the required college-level semester-unit courses within four years of the date the license was issued. These courses are separate from continuing education courses.

Late Renewal

The holder of a license who fails to renew it prior to the expiration of the period for which it was issued may renew it within two years from such expiration by submitting a

proper application, evidence of completion of the current continuing education requirements, and the appropriate late renewal fee. Of course, there can be no licensed activity between the date of license expiration and the date of late renewal. A commission may not be claimed without a valid license.

An individual with a conditional salesperson license which has been suspended and who does not submit evidence of completion of the two required college-level semester-unit courses within four years of the date the license was issued may not renew the license on a late basis. (Section 10154 of the Code)

Two years after a license expires, all license rights lapse. The individual will be required to requalify through the examination process before being licensed in real estate.

OTHER LICENSE INFORMATION

Social Security Number

Effective January 1, 1995, an original or renewal license may not be issued to any individual who has not provided a social security number. This requirement applies to real estate broker and officer licenses, real estate salesperson licenses, pre-paid rental listing licenses, and existing mineral, oil, and gas licenses. The requirement does not apply to corporations with regard to a federal tax identification number.

Child Support Obligors

In accordance with Section 11350.6 of the Welfare and Institutions Code, DRE is precluded from issuing or renewing a full-term license if the applicant is on a list of persons (obligors) who have not complied with a court order to provide child support payments. Additionally, a license may be suspended if a licensee's name remains on the list 150 days after notice. Information concerning such individuals is provided to DRE by the Department of Social Services, which obtains the information from the district attorney of each county in California.

A 150-day temporary license may be issued to an otherwise qualified applicant who is on the list of child support obligors. The applicant will be advised that the license applied for cannot be issued unless a release is obtained from the district attorney's office during the 150-day temporary license period. If the applicant fails to submit an appropriate release to DRE from the district attorney's office within the 150-day period, all license rights cease. Only one 150-day temporary license may be issued. License fees submitted are not refundable. In order to be issued another license, all applicable statutory provisions must be met and another licensing fee would have to be submitted. Renewal applicants may have to submit a late renewal fee.

DRE is regularly provided with a supplemental list of obligors which identify individuals who are more than four months delinquent in child support payments and which is matched against DRE's total license population. If there is a match of an existing licensee and the license is not due for renewal for at least six months, the licensee will be advised that the license will be suspended if the delinquency is not cleared within 150 days. The suspension will remain in effect until the delinquency is cleared.

DRE will assess a \$95 fee when the name of a license applicant or licensee appears on a child support obligor list or supplemental list.

Non-Working Status

A salesperson may be issued and hold a license (but not perform acts requiring a license) without being in the employ of a broker. The license will be assigned non-working status until DRE is properly notified that the salesperson is employed by a broker.

Mineral, Oil and Gas Licenses

Effective January 1, 1994, DRE no longer issues original mineral, oil, and gas (MOG) broker licenses or permits. MOG activities, as defined in Sections 10507 and 10581 of the Code, can be performed by currently licensed MOG brokers, or by licensed real estate brokers. Licensed MOG brokers may apply for license renewal.

Partnerships

DRE does not issue partnership licenses. A partnership may perform acts for which a real estate broker license is required, provided every partner through whom the partnership so acts is a licensed real estate broker.

Broker members of a partnership formed by written agreement may operate from branch offices of the partnership without obtaining an individual branch office license, provided one member of the partnership is licensed at that location. (Commissioner's Regulation 2728)

A salesperson whose employing broker is a member of a partnership formed by written agreement may perform licensed acts on behalf of the partnership from any branch office maintained by any one of the partners.

Restricted License

There are certain types of restricted licenses sometimes issued by the Commissioner when a license has been suspended, revoked or denied after a hearing. In effect, they are probationary licenses and contain specific restrictions.

The Commissioner can restrict licenses by: term (one month, three months, etc.); employment by a particular broker (for a salesperson); limitation to a certain area or type of activity; requiring detailed reports of each transaction; requiring the filing of a surety bond; other conditions or combinations of conditions.

Fees

License or examination fees must accompany the application for the different types of examination or licenses. Applicants or other interested parties should contact any DRE district office or visit DRE's Web site at www.dre.ca.gov to obtain information on the current examination or license application fees.

By law, fees paid to DRE in connection with licenses and examinations are not refundable (Section 10207). Therefore, a change of mind on the part of the applicant, rejection of a broker license examination application, examination failure or failure to appear to take an examination will *not* result in refund of all or any part of the fee paid.

There are no fees to implement the following: address change; salesperson employment transfer; personal or corporate name change; adding or deleting fictitious business name; branch office; and duplicate license certificate.

Because of statutory mandates, license fees are likely to change frequently. Always check to ensure you are submitting the correct fees.

CONTINUING EDUCATION

All license renewal applicants must prove compliance with the continuing education (CE) requirements. Except for the first renewal of a real estate salesperson, all renewal applicants must satisfactorily complete a total of 45 clock-hours of approved offerings within the four-year period immediately preceding license renewal. See Section 10170, et seq. of the Code.

For current information on the CE requirements, a licensee may contact DRE's Licensing Information Section [P.O. Box 187000, Sacramento, CA 95818-7000, (916) 227-0931] or obtain from any DRE office a copy of the brochure "Instructions to License Applicants."

Renewal Procedure

Information regarding successful completion must be listed on a Continuing Education Course Verification (RE 251) and forwarded with the application for renewal. DRE does not accept an application for license renewal earlier than 60 days prior to the expiration of the license.

Exclusion from CE Requirement

An individual who has been a licensee in good standing for 30 continuous years in this State and who is 70 years of age or older is exempt from the CE requirement.

List of Approved Sponsors and Their Offerings

A list of approved sponsors and their offerings may be reviewed, but not purchased, at any DRE office. You may purchase a list by sending a Request for CE Course List Request (RE 301), along with the fee indicated on that form, to:

Department of Real Estate
Education Section
P.O. Box 187000
Sacramento, CA 95818-7000

MISCELLANEOUS INFORMATION

Main Office Address Change

A broker engaged in activities requiring a license must maintain an office or definite place of business in California. The broker's license and the licenses of any salespersons employed by the broker must be available for inspection by the Commissioner or a designated representative at the broker's principal place of business.

A broker who changes his/her main office address must forward a written notice to DRE in Sacramento not later than the next business day, using a Broker Change Application (RE 204) [or Corporation Change Application (RE 204A)]. No fee is required. The license certificate may be corrected by the licensee by striking out the old address and typing or writing the new address in ink and dating and initialing the change. The broker may obtain a new license certificate reflecting the address change by requesting a duplicate license on RE 204 or RE 204A.

Branch Office

This is the license required for each additional business location if a broker maintains more than one place of business in the State. The branch office license permits full operation from that office and must be available for inspection at the branch location. Branch office licenses may be added or deleted by using RE 203 (Branch Office Application). No fee is required. A new license is issued for each additional branch office.

Fictitious Business Name

An individual or corporate broker can operate under a fictitious business name (dba) after DRE issues a license bearing the fictitious name. Before that license can be issued the individual or corporation must forward to DRE a copy of the fictitious business name statement (FBNS) as filed with the county clerk in the county where the broker maintains the principal business address (See Section 17900 et seq. of the Business and Professions Code). The broker must appear as the registrant on the FBNS. The broker must forward the appropriate change application (RE 204 for individual broker; RE 204A for corporation) to DRE with the FBNS. The addition of a dba to a broker's license does not affect the licenses of the salespersons in the broker's employ.

An application for a license bearing a fictitious business name may be denied if the name:

1. is misleading or would constitute false advertising.
2. implies a partnership or corporation when a partnership or corporation does not exist.
3. includes the name of a real estate salesperson.
4. constitutes a violation of the provisions of Sections 17910, 17910.5, or 17917 of the Code.
5. is the name formerly used by a licensee whose license has been revoked.
6. contains the word or designation "bank," "banker," "trust," "trustee," "trust company," "insurance" or "assurance," "escrow," or "savings."

A broker desiring to use more than one fictitious business name is required to submit a change application (RE 204 or RE 204A) and a copy of the FBNS filed with the county clerk for each fictitious business name. Each fictitious business name is an addition to the existing license, and the right to use it will expire at the same time as the license. The broker's main office license certificate will then display on its face the multiple fictitious business names. All other business locations will be designated as branch offices. A broker may use, and salespersons may work under, any fictitious business name at any business location maintained by the broker.

An FBNS expires at the end of five years from December 31 of the year in which it was filed in the office of the county clerk. When a new statement is required because the prior statement has expired, it need not be published unless there has been a change in the information required in the expired statement.

If a broker or corporation changes the licensed name and has a dba, a new fictitious business name statement must be submitted for each dba, with the new license name shown as the registrant.

Mailing Addresses

All mailings from DRE will be addressed to the mailing address provided by the licensee. A separate mailing address may be provided which is distinct from the business address of record. Brokers are required to notify DRE whenever a change of address occurs for the broker's principal place of business or any branch office not later than the next business day following the change. Salespersons are required to maintain on file the address of the principal place of business of the broker who employs the salesperson. Brokers and salespersons are required to maintain their mailing address of record on file at all times while licensed and during the duration of the two-year late renewal grace period. In order to file a change of address notification, a licensee must forward to DRE the appropriate change application (RE 204 for broker licensees or RE 214 for salesperson licensees) for each license affected. Mailing addresses are public information and are available in a list format.

Non-Resident Information

License applicants or licensees who are out of state residents must file a signed and notarized Consent To Service of Process (RE 234). Brokers are required to maintain a California business address if engaging in licensed activities in California. If a broker does not engage in licensed activities in California, the broker must file an Out of State Broker Acknowledgment (RE 235). Salespersons must be licensed with a California broker if engaging in business in California.

Transfer of Salesperson License

To effect a transfer of employment, a salesperson and the former and new employing brokers must take the following steps:

1. The former employing broker must immediately notify DRE Licensing in Sacramento in writing. (Section 10161.8 of the Code)
2. The former employer gives the transferring salesperson his/her license certificate and signs a Salesperson Change Application (RE 214).
3. Within five days, the salesperson and the new employing broker complete RE 214 (Salesperson Change Application) and send it to the Department of Real Estate, P.O. Box 187003, Sacramento 95818-7003. A new license certificate will not be issued.

Termination of Salesperson for Violation

When a salesperson is terminated by an employing broker for a violation of any of the provisions of the Real Estate Law, the employing broker must immediately file a certified written statement of the facts with DRE. (Section 10178 of the Code)

Effect of Revocation or Suspension

When a real estate broker license is revoked or suspended, the licenses of every real estate salesperson in the broker's employ are automatically canceled. Such salespersons may transfer their licenses to a new employing broker.

Loss of License Status

This may occur when a person holding a license allows two years to elapse from the expiration date without applying for (late) renewal, submitting evidence of completion of the continuing education requirements, and paying the required fee. Loss of license status also occurs if a salesperson is issued a conditional license which is suspended by operation of the law (Section 10153.4 of the Code) and the individual fails to submit

evidence of the remaining two required college-level courses within four years from the date the license was issued. A third example of loss of license status occurs if a license is revoked.

PREPAID RENTAL LISTING SERVICE LICENSE (PRLS)

A PRLS is in the business of supplying prospective tenants with listings of residential real property for rent while collecting a fee at the same time or in advance of the time the listings are provided. A PRLS does *not* negotiate rental or lease agreements. Sections 10167-10167.17 of the Code and Regulations 2850-2853 define this activity and contain the PRLS licensing requirements.

ENFORCEMENT OF REAL ESTATE LAW

A licensing and regulatory law is effective only to the extent of its enforcement. The Commissioner, as the chief officer of the Department, is duty bound to enforce the provisions of the Real Estate Law.

The Commissioner shall upon a verified written complaint, or may, upon the Commissioner's own motion, investigate the actions of any person engaged in the business or acting in the capacity of a licensee within this state, and has the power to suspend or revoke the real estate license. The Commissioner also has the authority to deny a license to an applicant if the applicant does not meet the full requirements of the law. Through a screening process (including the fingerprint record) of an applicant for a license, if it is ascertained that the applicant has a criminal record or some other record that may reflect on the applicant's character, an investigation is made by the Commissioner's staff. A formal hearing may be ordered to determine whether or not the applicant meets the requirements of honesty and truthfulness. The Commissioner also has the authority to require evidence of honesty and truthfulness of officers, directors and persons who own or control more than 10% of the shares of the applicant for a corporate real estate brokerage license.

Generally speaking, an investigation of a licensee is based upon a written statement from one who believes he or she has been wronged by a licensee who was acting in the capacity of an agent. The following investigative procedures are followed by the Commissioner's staff: statements are obtained from witnesses, if any; a statement may be obtained from the licensee involved; bank records, title company records and public records are checked as necessary. As part of the investigation, an informal conference may be called, and all parties concerned may be requested to attend for the purpose of determining the validity and seriousness of the complaint. If it appears that the complaint is of a serious nature and that a violation of law has occurred, an accusation is filed and there may be a formal hearing which could result in suspension or revocation of the license.

Formal Hearings

The formal hearing is conducted in accordance with procedures set forth in the Administrative Procedure Act. The accusation or statement of issues is served upon the affected licensee, who is informed of the rights of an accused. In the hearing, the Commissioner becomes the complainant, and brings the charges against the licensee. The original complainant usually becomes a witness. The licensee, known as the respondent in the hearing procedure, may appear with or without counsel. A record is made of the proceedings and the hearing is conducted according to rules of evidence. Testimony is taken under oath. An administrative law judge from the Office of

Administrative Hearings hears the case. The Commissioner's case is presented by the Commissioner's counsel. The administrative law judge issues a proposed decision based upon the findings. The Commissioner may reject or accept the proposed decision, or reduce the proposed penalty and make an official decision. The respondent may petition for reconsideration, and has the right of appeal through the courts.

If the charges are not sustained at the hearing, they are dismissed. On the other hand, if the testimony substantiates the charges and they appear to be sufficiently serious, the license of the respondent is suspended or revoked. After a license is revoked, the person affected may not apply for reinstatement of the license until one year has passed.

Representatives of the Commissioner also investigate persons or firms who appear to be operating improperly, or without benefit of a license, or who subdivide land without complying with the subdivision laws enforced by the Commissioner. If sufficient evidence of a violation is obtained, an Order to Desist and Refrain is issued, or a complaint is brought and the parties are prosecuted in a court of competent jurisdiction.

Violations

Sections 10176 and 10177 of the Code constitute the foundation for most license suspensions or revocations. Section 10176 is concerned with the actions of a real estate licensee performing or attempting to perform any of the licensed acts within the scope of the Real Estate Law. As a general rule, the licensee must have been acting as an agent in a real estate transaction before the section will apply. The provisions of some parts of Section 10177, on the other hand, will apply to situations where the licensee was not necessarily acting as an agent. The following is a brief discussion of the various grounds for disciplinary action against a licensee and the reasons for which a real estate license may be denied:

Misrepresentation. Section 10176(a). Many complaints received by the Commissioner allege misrepresentation on the part of the broker or salesperson. Included also as a cause for discipline under this section is failure of a broker or salesperson to disclose to his or her principal material facts of which the principal should be made aware. If the misrepresentation was not important, and the person to whom it was made would have proceeded with the transaction anyway, the misrepresentation probably would not be material. However, an Attorney General's opinion holds that damage or injury need not be present to support an action under this section. The reason is that the California Real Estate Law concerns the conduct of licensees rather than the settling of disputes about damages or injuries between licensees and their clients.

False promise. Section 10176(b). A false promise and a misrepresentation are not the same thing. A misrepresentation is a false statement of fact. A false promise is a false statement about what the promisor is going to do. Many times a false promise is proved by showing that the promise was impossible to perform and that the person making the promise knew it was impossible.

Continued misrepresentation. Section 10176(c). This section gives the Commissioner the right to discipline a licensee for "a continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons."

Dual agency. Section 10176(d). Failure to inform all principals that the licensee is acting as agent for more than one party in the transaction.

Commingling. Section 10176(e). Commingling takes place when a broker has mixed the funds of a principal with the broker's own money. (Conversion is misappropriating and *using* principal's funds. Conversion, of course, can be a more serious offense.)

Definite termination date. Section 10176(f). Failure to include a specified termination date on all exclusive listings relating to transactions for which a real estate license is required. The exclusive listing itself must be clear as to expiration.

Secret profit. Section 10176(g). Secret profit cases usually arise when the broker, who already has a higher offer from another buyer, makes a low offer, usually through a "dummy" purchaser. The broker then sells the property to the interested buyer for the higher price. The difference is the secret profit.

Listing-option. Section 10176(h). A licensee who has used a form which is both an option and a listing must inform the principal of the amount of profit the licensee will make, and must obtain the written consent of the principal approving the amount of such profit, before the licensee may exercise the option. This section does not apply where a licensee is using an option only.

Dishonest dealing. Section 10176(i). "Dishonest dealing" is a sort of catch-all section similar in many ways to Section 10177(f). The difference is that under Section 10176(i) the acts must have been those requiring a license, while there is no such need under Section 10177(f).

Signatures of prospective purchasers. Section 10176(j). Brokers must obtain a written authorization to sell from a business owner before securing the signature of a prospective purchaser to any agreement providing for compensation to the broker if the purchaser buys the business.

Obtaining a license by fraud. Section 10177(a). Misstatements of fact in an application for a license; procurement of a license by fraud, misrepresentation, or deceit (e.g., failure to reveal a previous criminal record).

Convictions. Section 10177(b). Criminal conviction for either a felony or a misdemeanor which involves moral turpitude and is substantially related to the qualifications, functions, or duties of a real estate licensee. A court has defined moral turpitude as "everything done contrary to justice, honesty, modesty, or good morals."

False advertising. Section 10177 (c). Includes subdivision sales as well as general property sales.

Violations of other sections. Section 10177(d). This section is the Department's authority to proceed against the licensee for violation of any of the other sections of the Real Estate Law, the Regulations of the Commissioner, and the Subdivided Lands Law.

Misuse of trade name. Section 10177(e). Use of any trade name or insignia of membership in any real estate organization if the licensee is not a member of that organization.

Conduct warranting denial. Section 10177(f). An essential requirement to the issuance of a license is that the applicant be honest and truthful. If any of the acts of a licensee establish that a licensee is not possessed of these characteristics, Section 10177(f) will apply. This section also provides for disciplinary actions when a real estate licensee has either had a license denied or a license issued by another agency of this state, another

state, or the federal government, revoked or suspended for acts which if done by a real estate licensee would be grounds for the suspension or revocation of a California real estate license.

Negligence or incompetence. Section 10177(g). The Department proceeds in those cases where the licensee is so careless or unqualified that to allow the licensee to handle a transaction would endanger the interests of clients or customers.

Supervision of salespersons. Section 10177(h). Disciplinary action may result if a broker fails to exercise reasonable supervision over the activities of the broker's salespersons.

Violating government trust. Section 10177(i). Using Government employment to violate the confidential nature of records thereby made available.

Other dishonest conduct. Section 10177(j). Any other conduct which constitutes fraud or dishonest dealing.

Restricted license violation. Section 10177(k). Violation of the terms, conditions, restrictions and limitations contained in any order granting a restricted license.

Inducement of panic selling. Section 10177(l). To solicit or induce the sale, lease, or the listing for sale or lease, of residential property on the grounds, wholly or in part, of loss of value, increase in crime, or decline in the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons of another race, color, religion, ancestry or national origin.

Violation of Franchise Investment Law. Section 10177(m). Violation of any of the provisions of the Franchise Investment Law (Division 5 commencing with Section 31000) of Title 4 of the Corporations Code) or any regulations of the Corporations Commissioner pertaining thereto.

Violation of Corporations Code. Section 10177(n). Violation of any of the provisions of the Corporations Code or of the regulations of the Commissioner of Corporations relating to securities as specified in Section 25206 of the Corporations Code.

Failure to disclose ownership interest. Section 10177(o). Failure to disclose to buyer the nature and extent of ownership interest a licensee has in property which is the subject of a transaction in which the licensee is an agent for the buyer. Also, failure to disclose such ownership on the part of licensee's relative or special acquaintance *or* entity in which licensee has ownership interest.

Other Penalty Sections

There are additional sections in the Business and Professions Code which provide for the revocation or suspension of licenses. These violations could be included under Section 10177(d) of the law. The following are brief summaries:

Sections 10137 and 10138 - employing or compensating any unlicensed person to perform acts requiring a license.

Section 10140 - false advertising.

Section 10140.6 - advertising of acts which require a license must contain a designation disclosing that the licensee is performing such acts.

Section 10141 - broker must cause notice of sales price to be given to both buyers and sellers within one month after the sale is completed.

Section 10141.5 specifies a broker's responsibility for recording trust deeds.

Section 10142 - licensee must give a copy of any contract to the party signing it at the time it is signed.

Section 10145 specifies licensee's responsibilities in handling trust funds.

Section 10148 requires retention and availability for inspection and copying of all listings, deposit receipts, cancelled checks, trust records, etc. for a three year period.

Section 10160 - brokers shall retain and make available for inspection the licenses of salespersons in the broker's employ.

Section 10161.8 - broker must notify DRE when a salesperson is employed or terminated.

Section 10162 - all active brokers must maintain a definite place of business in the State of California.

Section 10163 - brokers maintaining more than one place of business must first procure branch office license(s).

Section 10165 - failure to make licenses available for inspection and to maintain a place of business.

Section 10167 requires the licensing of individuals, other than real estate licensees, engaged in prepaid rental listing services and makes a willful violation of the law a misdemeanor.

Section 10176.5 - violation of any of the Civil Code Sections (1102, et seq.) which deal with use of the Real Property Transfer Disclosure Statement.

Section 10177.1 - suspension without hearing if license procured by fraud, misrepresentation, deceit, or by the making of any material misstatement of fact in the application for license.

Section 10177.2 - violations while performing acts under Section 10131.6 (mobilehome sales).

Section 10177.4 - compensation for referring customers to escrow, pest control, home warranty, title insurer or underwritten title company or controlled escrow company.

Section 10177.5 - final judgment in a civil action against a licensee upon the grounds of fraud, misrepresentation or deceit.

Section 10178 - broker terminates a salesperson for cause and then fails to notify the Commissioner.

Section 10475 - automatic suspension of a real estate license if the Commissioner pays a claim against a licensee from the Recovery Account. No license reinstatement until full reimbursement to the fund, with interest.

Examples of Unlawful Conduct - Sale, Lease, or Exchange

In a sale, lease, or exchange transaction, conduct such as the following may result in license discipline under Sections 10176 or 10177 of the Business and Professions Code:

1. Knowingly making a substantial misrepresentation of the likely value of real property to:
 - A. Its owner either for the purpose of securing a listing or for the purpose of acquiring an interest in the property for the licensee's own account.
 - B. A prospective buyer for the purpose of inducing the buyer to make an offer to purchase the real property.
2. Representing to an owner of real property when seeking a listing that the licensee has obtained a bona fide written offer to purchase the property, unless at the time of the representation the licensee has possession of a bona fide written offer to purchase.
3. Stating or implying to an owner of real property during listing negotiations that the licensee is precluded by law, by regulation, or by the rules of any organization, other than the broker firm seeking the listing, from charging less than the commission or fee quoted to the owner by the licensee.
4. Knowingly making substantial misrepresentations regarding the licensee's relationship with an individual broker, corporate broker, or franchised brokerage company or that entity's/person's responsibility for the licensee's activities.
5. Knowingly underestimating the probable closing costs in a communication to the prospective buyer or seller of real property in order to induce that person to make or to accept an offer to purchase the property.
6. Knowingly making a false or misleading representation to the seller of real property as to the form, amount and/or treatment of a deposit toward the purchase of the property made by an offeror.
7. Knowingly making a false or misleading representation to a seller of real property, who has agreed to finance all or part of a purchase price by carrying back a loan, about a buyer's ability to repay the loan in accordance with its terms and conditions.
8. Making an addition to or modification of the terms of an instrument previously signed or initialed by a party to a transaction without the knowledge and consent of the party.
9. A representation made as a principal or agent to a prospective purchaser of a promissory note secured by real property about the market value of the securing property without a reasonable basis for believing the truth and accuracy of the representation.
10. Knowingly making a false or misleading representation or representing, without a reasonable basis for believing its truth, the nature and/or condition of the interior or exterior features of a property when soliciting an offer.
11. Knowingly making a false or misleading representation or representing, without a reasonable basis for believing its truth, the size of a parcel, square footage of improvements or the location of the boundary lines of real property being offered for sale, lease or exchange.
12. Knowingly making a false or misleading representation or representing to a prospective buyer or lessee of real property, without a reasonable basis to believe its

truth, that the property can be used for certain purposes with the intent of inducing the prospective buyer or lessee to acquire an interest in the real property.

13. When acting in the capacity of an agent in a transaction for the sale, lease or exchange of real property, failing to disclose to a prospective purchaser or lessee facts known to the licensee materially affecting the value or desirability of the property, when the licensee has reason to believe that such facts are not known to nor readily observable by a prospective purchaser or lessee.
14. Willfully failing, when acting as a listing agent, to present or cause to be presented to the owner of the property any written offer to purchase received prior to the closing of a sale, unless expressly instructed by the owner not to present such an offer, or unless the offer is patently frivolous.
15. When acting as the listing agent, presenting competing written offers to purchase real property to the owner in such a manner as to induce the owner to accept the offer which will provide the greatest compensation to the listing broker without regard to the benefits, advantages and/or disadvantages to the owner.
16. Failing to explain to the parties or prospective parties to a real estate transaction for whom the licensee is acting as an agent the meaning and probable significance of a contingency in an offer or contract that the licensee knows or reasonably believes may affect the closing date of the transaction, or the timing of the vacating of the property by the seller or its occupancy by the buyer.
17. Failing to disclose to the seller of real property in a transaction in which the licensee is an agent for the seller the nature and extent of any direct or indirect interest that the licensee expects to acquire as a result of the sale. (The licensee should disclose to the seller: prospective purchase of the property by a person related to the licensee by blood or marriage; purchase by an entity in which the licensee has an ownership interest; or purchase by any other person with whom the licensee occupies a special relationship where there is a reasonable probability that the licensee could be indirectly acquiring an interest in the property.)
18. Failing to disclose to the buyer of real property in a transaction in which the licensee is an agent for the buyer the nature and extent of a licensee's direct or indirect ownership interest in such real property: e.g., the direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage; by an entity in which the licensee has an ownership interest; or by any other person with whom the licensee occupies a special relationship.
19. Failing to disclose to a principal for whom the licensee is acting as an agent any significant interest the licensee has in a particular entity when the licensee recommends the use of the services or products of such entity.

Examples of Unlawful Conduct - Loan Transactions

Conduct such as the following when soliciting, negotiating or arranging a loan secured by real property or the sale of a promissory note secured by real property may result in license discipline:

1. Knowingly misrepresenting to a prospective borrower of a loan to be secured by real property or to an assignor/endorser of a promissory note secured by real property that there is an existing lender willing to make the loan or that there is a purchaser

for the note, for the purpose of inducing the borrower or assignor/endorser to utilize the services of the licensee.

2. Knowingly making a false or misleading representation to a prospective lender or purchaser of a loan secured directly or collaterally by real property about a borrower's ability to repay the loan in accordance with its terms and conditions.
3. Failing to disclose to a prospective lender or note purchaser information about the prospective borrower's identity, occupation, employment, income and credit data as represented to the broker by the prospective borrower.
4. Failing to disclose information known to the broker relative to the ability of the borrower to meet his or her potential or existing contractual obligations under the note or contract including information known about the borrower's payment history on an existing note, whether the note is in default or the borrower in bankruptcy.
5. Knowingly underestimating the probable closing costs in a communication to a prospective borrower or lender of a loan to be secured by a lien on real property for the purpose of inducing the borrower or lender to enter into the loan transaction.
6. When soliciting a prospective lender to make a loan to be secured by real property, falsely representing or representing without a reasonable basis to believe its truth, the priority of the security, as a lien against the real property securing the loan, i.e., a first, second or third deed of trust.
7. Knowingly misrepresenting in any transaction that a specific service is free when the licensee knows or has a reasonable basis to know that it is covered by a fee to be charged as part of the transaction.
8. Knowingly making a false or misleading representation to a lender or assignee/endorsee of a lender of a loan secured directly or collaterally by a lien on real property about the amount and treatment of loan payments, including loan payoffs, and the failure to account to the lender or assignee/endorsee of a lender as to the disposition of such payments.
9. When acting as a licensee in a transaction for the purpose of obtaining a loan, and in receipt of an advance fee from the borrower for this purpose, failure to account to the borrower for the disposition of the advance fee.
10. Knowingly making a false or misleading representation about the terms and conditions of a loan to be secured by a lien on real property when soliciting a borrower or negotiating the loan.
11. Knowingly making a false or misleading representation or representing, without a reasonable basis for believing its truth, when soliciting a lender or negotiating a loan to be secured by a lien on real property, about the market value of the securing real property, the nature and/or condition of the interior or exterior features of the securing real property, its size or the square footage of any improvements on the securing real property.

Regulations

The Commissioner has the authority to adopt regulations to aid in the administration and enforcement of the Real Estate Law and the Subdivided Lands Law. The Regulations of the Real Estate Commissioner have the force and effect of the law itself.

Licensees and prospective licensees should have a thorough knowledge of the regulations.

DISCRIMINATION

Federal and California laws prohibit discrimination in the sale, rental or use of real property, whether based on sex, race, color, religion, ancestry, national origin, disability or age. These laws apply to persons who sell or rent housing or other real property and to the real estate broker or salesperson involved in such transactions.

The Unruh Civil Rights Act (California Civil Code Section 51, et seq.) declares: "All persons within the jurisdiction of this State are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin or disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever..."

It is the intent of the Unruh Act to give all persons full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. This law applies to all aspects of real estate activities, including real estate brokerage. An owner/renter of real property cannot discriminate when offering a unit for rent.

Civil Code Section 52 provides monetary remedies to persons who have been discriminated against in violation of the Unruh Act, stating, "Whoever denies, aids, or incites denial, or makes any discrimination or distinction contrary to Section 51 or Section 51.5 [pertaining to business establishments] is liable for each and every such offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than one thousand dollars (\$1,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51 or 51.5."

Age Discrimination - Senior Citizen Housing

Various cases have held that the Unruh Civil Rights Act applies to age discrimination in apartment rental and condominium properties because they are considered to be businesses subject to this act. In 1984 the Legislature enacted Civil Code Section 51.2 to clarify the holdings in the California Supreme Court cases dealing with the scope of the applicability of the Unruh Civil Rights Act. In the same bill, it enacted Civil Code Section 51.3 to establish and preserve specially designed accessible housing for senior citizens. Additionally, these provisions have been subsequently amended to comply with provisions of the federal law as it pertains to senior citizen housing developments.

Section 51.2 states, in part, that: "Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve such housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibitions in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status..."

Section 51.3 provides definitions and criteria to be applied for the express allowance for enforcement of legal documents that provide for age limitations for senior citizens housing. This law applies to condominium, stock cooperative, limited-equity housing

cooperative, planned development or multi-family residential rental property developed for and initially put into use as housing for senior citizens or substantially rehabilitated or renovated for, and immediately put into use as housing for senior citizens, as described in Section 51.3. The term “senior citizen” is defined as a person 62 years or older or one who is 55 years or older in a senior citizen housing development. A senior citizen housing development is a residential development built, substantially rehabilitated, or substantially renovated for senior citizens and which consists of:

- 70 or more dwelling units built prior to January 1, 1996 (or 150 or more dwelling units built on or after January 1, 1996) in a standard metropolitan statistical area (SMSA) of at least 1,000,000 total residents or 1,000 residents per square mile (1990 census);
- 100 or more dwelling units in an SMSA not exceeding either 399,000 total residents or 999 residents per square mile (1990 census);
- at least 35 dwelling units in any other area.

The law provides standards for the restrictions used for senior citizen housing developments. The restrictions cannot limit occupancy more strictly than to senior citizen residents and “a qualified permanent resident,” i.e., a younger spouse or cohabitant or, as an alternative to a spouse, any person who provides primary physical or financial support to the senior citizen. In any such case, the lower age limit is 45 years. This “qualified permanent resident” must have an ownership interest in, or expectation of an ownership interest in, the dwelling unit within the housing development that otherwise limits occupancy based upon age. The qualified permanent resident can remain in residency after the death of the senior citizen or upon dissolution of a marriage with a senior citizen. The restrictions must allow for temporary residency of any non-qualifying person for not less than 60 days per calendar year.

Until January 1, 2000, unless this date is later changed by the legislature, housing developments which were constructed prior to February 8, 1982 can still discriminate by age for senior citizens as an exception to Section 51, if they meet the requirements for senior citizen housing, *except* the criteria that the housing be specifically designed for physical and social needs of senior citizens.

The Unruh Act does not apply to mobilehome developments.

Under the Unruh Act, as well as under case law, restrictions or prohibitions by covenant or condition in written instruments, such as CC&R's, on use, occupancy or transfer of title to real property limiting acquisition, use, occupation of real property because of any of the prohibited classifications are void. (Civil Code Section 51.3)

Housing Discrimination

The Fair Employment and Housing Act (Government Code Section 12900, et seq.) applies to owners of specified types of property, to real estate brokers and salespersons, to other agents and to financial institutions. Sections 12955 and 12980 – 12988 specifically cover housing discrimination. The law prohibits discrimination in supplying housing accommodations because of race, color, religion, sex, marital status, national origin, ancestry, age, familial status or disability. (The phrase “housing accommodations” is defined as improved or unimproved real property used or intended to be used as a residence by the owner and which consists of not more than four dwelling units. The definition also includes four or fewer owner-occupied housing units

that secure a home improvement loan.) The law forbids such discrimination in the sale, rental, lease or financing of practically all types of housing, and establishes methods of investigating, preventing and remedying violations. However, the provisions of Sections 51.2 and 51.3 of the Civil Code, as described above, which establish permissible age criteria for a senior citizen retirement community as an exception to the basic prohibition against age discrimination in housing, also apply to this Act.

Housing discrimination under the Fair Employment and Housing Act is handled by administrative procedures. Complaints are directed to the Department of Fair Employment and Housing and are investigated by its staff. If the Department decides that the law has been violated, and if the person accused of violating the law cannot be persuaded to correct the violation, the Department may file an accusation with the Fair Employment and Housing Commission or bring an action in the Superior Court for an injunction. If the Fair Employment and Housing Commission, after hearing, finds a violation of the law, it may order the sale or rental of the accommodation or like accommodations, if available. It may order financial assistance terms, conditions or privileges previously denied. In addition, it may order payment of punitive damages not to exceed \$1,000, adjusted annually in accordance with the consumer price index, and the payment of actual damages. Substantial civil penalties can also be imposed by the Commission. The Department is required to do a compliance review to determine whether its order is being carried out.

The Fair Employment and Housing Act applies to all housing accommodations but does not apply to renting or leasing to a roomer or boarder in a single-family house, provided that no more than one roomer or boarder is to live within the household.

The term “discrimination” includes refusal to sell, rent, or lease housing accommodations, including inferior terms, misrepresentation as to availability, cancellations, etc. For sale or rent advertisements containing discriminatory information are prohibited. Also, discrimination includes failure to design or build a multi-family dwelling of four or more units in a manner that allows disabled persons access and use.

Other State Laws and Regulations

The Housing Financial Discrimination Act of 1977, also known as the Holden Act (Part 6 of Division 24 of the Health and Safety Code, Section 35800 et seq.), prohibits discriminatory loan practices on the part of financial institutions (banks, savings and loan associations, or other financial institutions, including mortgage loan brokers, mortgage bankers and public agencies which regularly make, arrange, or purchase loans for the purchase, construction, rehabilitation, improvement, or refinancing of housing accommodations). See Chapter 12 for further discussion.

No financial institution shall discriminate in their financial assistance wholly or partly on the basis of consideration of conditions, characteristics or trends in a neighborhood or geographic area unless the financial institution can demonstrate that such consideration in a particular case is necessary to avoid an unsafe and unsound business practice.

The Secretary of the Business, Transportation and Housing Agency has issued rules, regulations and guidelines for enforcement of this law and is empowered to investigate complaints regarding lending patterns and practices. Investigation of complaints has been delegated to the state agency which regulates the particular financial institution

involved. If a violation is found, the Secretary can order that the loan be made on nondiscriminatory terms or impose a fine of up to \$1,000.

Financial institutions are required to notify loan applicants of the existence of this law. Business and Professions Code Section 125.6 contains disciplinary provisions for discriminatory acts by any person licensed under the provisions of the Business and Professions Code.

Commissioner's Regulations 2725(f), 2780 and 2781 deal with discriminatory conduct and proper supervision of real estate licensees in that regard.

Business and Professions Code Section 10177(l) includes the practice of "block busting" as grounds for discipline of a real estate license.

Notice of Discriminatory Restrictions

Effective January, 2000, a county recorder, title insurance company, escrow company, or real estate licensee who provides a declaration, governing documents or deed to any person must provide a specified statement about the illegality of discriminatory restrictions and the right of homeowners to have such language removed. The statement must be contained in either a cover page placed over the document or a stamp on the first page of the document.

The Federal Rules

The Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, provides an all-encompassing set of rules prohibiting discrimination on the part of owners of real property and their agents. This law applies to all sales or rentals of residences through the facilities of real estate licensees and to publication, posting, mailing or advertising in violation of this law. Direct refusal of an owner to sell a home because of race is, of course, a violation. This law applies to most rental of dwelling units, except it does not apply to the rental of rooms or units in dwellings of four or fewer living quarters if the owner actually occupies one of the living units as his residence.

Real estate licensees are in violation of this law if they commit any of the prohibited actions, even if there was no intent to discriminate, if the result is proscribed discrimination. The law applies to "blockbusting" and steering of home buyers to different areas on the basis of prohibited classifications.

Wherever federal law is applicable, it is paramount. Title VIII declares that its purpose is to provide "within constitutional limitations...for fair housing throughout the United States." In short, this law applies as thoroughly and as widely as is permissible under the broadest applicable provision of the Constitution and applies even to the most local transactions. This law is enforced by the Secretary of Housing and Urban Development or by civil actions by aggrieved parties or by an attorney general in federal or state court.

Another provision of Title VIII prohibits denial of membership or participation in a real estate board or multiple listing service to a person because of race, color, religion or national origin, or discrimination against a person in terms or conditions of membership. The federal law under Title VIII and relevant cases leads to the following general conclusion for real estate licensees: do not discriminate and, to that end, do not accept restrictive listings or make, print, or publish any notice, statement or advertisement with respect to a sale or rental of a dwelling which suggests discrimination because of race, color, religion, national origin or any other of the prohibited classifications.

The sum of the matter is that there are both a number of state laws and a federal law that apply to discrimination in real estate transactions. Every prohibition of the Unruh Act and the California Fair Employment and Housing Acts remains in effect, and what discrimination they do not prohibit, federal law does. Thus, no one may refuse to sell, lease or rent to another because of race or color, or on the basis of any other prohibited classifications, and no real estate licensee may do so, regardless of the principal's direction. If a principal seeks to restrict a listing on the basis of any of the prohibited classifications, the licensee must refuse to accept the listing.

SUBDIVISIONS

Every broker and salesperson and prospective licensee should be familiar with the extent and purpose of the Commissioner's jurisdiction over the sale or lease of newly subdivided land. Sooner or later the majority of active licensees are associated with the sale of subdivided property or are called on for advice in preparing a subdivision for market.

Sometimes a broker will find that a principal is creating a subdivision without realizing it. The broker should be equipped to protect the principal from violating the law.

When selling subdivided property, the broker must make certain that two important requirements of the subdivision law are observed:

1. Broker must furnish the prospective buyer with a copy of the subdivision public report, obtain a receipt, and give the prospective buyer an opportunity to read the report before the prospect makes an offer to purchase.
2. Broker must handle the deposit or purchase money in accordance with the law.

DEPARTMENT PUBLICATIONS

Although DRE's function as a licensing and law enforcement agency is primarily that of protecting the public, its policy has been to be of assistance to its licensees and to encourage a high level of ethical and professional standards.

To encourage education for licensees, the Department publishes this *Reference Book* and the *Real Estate Law* book, (containing the Real Estate Law, Subdivided Lands Law, Commissioner's Regulations, and pertinent excerpts from the California codes).

DRE also publishes the quarterly *Real Estate Bulletin* which is distributed to all brokers and salespersons. This publication is intended for the education of licensees by keeping them informed of the latest administrative provisions and the current practices in real estate and allied activities.

For information regarding the examination process and the issuance of original licenses, the Department publishes a free pamphlet entitled *Instructions to License Applicants*, available at all district offices.

The Department also publishes several consumer brochures and subdivision guides.

Order forms for the Department's current publications can be obtained at the district offices or by writing to Book Orders, Department of Real Estate, P.O. Box 187006, Sacramento, CA 95818-7006.

RECOVERY ACCOUNT

The Recovery Account is a fund of last resort for a member of the public who has obtained a final civil judgment or criminal restitution order against a real estate licensee based on fraud or certain other grounds and who has been unable to satisfy the judgment through the normal post-judgment proceedings.

For payment to be made, the judgment must be based upon intentional fraud or conversion of trust funds. The licensee must have been properly licensed at the time the cause of action arose, and must have been performing acts requiring a real estate license. The applicant must file the application within one year of the final judgment or criminal restitution order and must show that he or she has made all reasonable efforts to satisfy the judgment from the assets of not only the judgment debtor but also all other persons who may have been liable in the transaction.

When an application for payment is filed, DRE has 15 days to notify the applicant of any deficiencies. After the application is substantially complete, DRE has 90 days within which to pay, compromise, or deny the claim. If an application is denied, the applicant has six months within which to refile with the court which rendered the judgment.

If payment is made, the license of the judgment debtor is automatically suspended until he or she has repaid the amount plus interest. A judgment debtor who filed a timely response may file a writ of mandamus to challenge the suspension of his or her license.

As to a particular transaction/licensee, Section 10474 of the Business and Professions Code sets forth the maximum liability of the Recovery Account.

A portion of license fees are used to fund the Recovery Account.

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